

**OPINION  
73-383**

February 26, 1973           (OPINION)

The Honorable Art Bunker  
Speaker of the House of Representatives  
North Dakota Legislative Assembly  
State Capitol  
Bismarck, ND 58501

Dear Representative Bunker:

This is in response to your letter of February 22, 1973, requesting my "opinion as to whether or not the provisions of section 57-58-01, particularly the first sentence thereof, will be operative and apply to school districts which will receive personal property replacement funds through the foundation program as provided for in Senate Bill 2026."

Since Senate Bill 2026 as messaged to the House includes the amendments to it that are shown on pages 331-334, 350 and 370 of the Senate Journal, it is that bill as so amended that will be considered here.

Section 57-58-01 has its source in Section 20 of Chapter 528 of the 1969 Session Laws, which chapter was enacted by the 1969 Legislature as Senate Bill 137. Senate Bill 137 as introduced in the 1969 legislative session did not include what is now the first sentence of section 57-58-01, nor did it include what is now the sixth sentence of that same first paragraph of the section. Those two sentences first appeared in the Conference Committee Report on Senate Bill 137 which was adopted and enacted by both houses of the Legislature. See 1969 House Journal page 1495, lines 417-423, and page 1496, lines 454-458; and see 1969 Senate Journal page 1143, lines 417-423, and page 1144, lines 454-458.

These two sentences (the first and sixth) in the first paragraph of section 57-58-01 are related provisions and read as follows:

"It is hereby provided that any political subdivision which has an existing bonded indebtedness for which a tax levy must be made in 1970 or any year thereafter, shall reduce its levy in each such year for current operating purposes by the amount which its tax levy on taxable property in that year for retirement of the bonded indebtedness is increased because of the exemption of personal property by subsection 25 of section 57-03-08.

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"Any amount that would be apportioned and credited to the retirement of a bonded indebtedness existing in 1970 for which a tax levy was made in 1970 and in any year thereafter, shall be credited to the general fund of the political subdivision."

Because of the interrelationship of these two sentences just quoted

and their relationship to the other sentences of the paragraph, we believe the first sentence was intended to be applicable only if an amount of replacement revenue for a bonded indebtedness of a political subdivision is in fact certified, apportioned and distributed to the political subdivision in accordance with the various provisions of section 57-58-01. Examining those provisions further, it is apparent that the second of the two sentences quoted above from section 57-58-01 necessarily has reference also to the sentences preceding it in 57-58-01 which require the Tax Commissioner to annually certify to the State Treasurer the amount of replacement revenue payment to be made to each county for apportionment and distribution to the political subdivisions entitled thereto. Relating those certification requirements to Senate Bill 2026, we find that sections 1 and 2 of the bill provide as follows:

"SECTION 1. SCHOOL DISTRICT REPLACEMENT REVENUE - LEGISLATIVE INTENT. The legislative assembly intends that allocations to replace the revenue lost by school districts through the repeal of the personal property tax be made through the foundation program rather than through the formula provided in section 57-58-01. It is the further intent of the legislative assembly that the personal property replacement moneys for junior colleges continue to be made through the formula provided in section 57-58-01."

"SECTION 2. CERTIFICATIONS NOT TO INCLUDE SCHOOL DISTRICT REPLACEMENT REVENUE. The certifications of the state tax commissioner to the state treasurer in the year 1974, and each year thereafter, which are made pursuant to section 57-58-01, shall not include any personal property tax replacement revenue which would otherwise be due school districts, nor shall it include personal property tax replacement revenue related to county equalization fund levies and the per capita school tax, provided, however, that such certifications shall include any amounts due school districts for junior colleges of such districts. The certification of the county auditor of each county to the state tax commissioner in the year 1974 and each year thereafter, as provided in section 57-58-01, shall not include any amount for taxes levied for school districts or the county equalization fund except for amounts due such districts for junior colleges."

Section 2 of Senate Bill 2026 as just quoted clearly provides that there shall be no personal property tax replacement revenue certified, apportioned or distributed under section 57-58-01 to any school district for any school district property tax levy except those levies made for junior colleges. As already stated, we believe the first sentence of section 57-58-01 was intended to be applicable only if an amount of replacement revenue for a bonded indebtedness of a political subdivision is in fact certified, apportioned and distributed to the political subdivision in accordance with the various provisions of section 57-58-01. Consequently, it follows that if Senate Bill 2026 becomes law, the first sentence of section 57-58-01 can have no application to a school district which has a bonded indebtedness because no personal property tax replacement revenue for that bonded indebtedness will be certified, apportioned and distributed under section 57-58-01 to any school district.

In our opinion, if Senate Bill 2026 as amended by the Senate becomes law, it would be doubtful that the personal property tax replacement provisions of section 57-58-01 would be applicable to school districts not having a junior college. However, as to any school district making a property tax levy for a junior college where the distribution of the personal property tax replacement revenue will be continued, the provisions of section 57-58-01 would apply, but only in respect to the property tax levy made by it for a junior college.

The foregoing conclusions are reached on the present status of Senate Bill 2026. However, if any further amendments are made, particularly in the areas under consideration in this opinion, a different result could be reached. This is particularly true with reference to the application of the first sentence of section 57-58-01. If the legislature were to incorporate language as specifically making section 57-58-01 applicable, the result would be obvious. The same would hold true if language were employed specifically saying that the provisions of section 57-58-01 shall not be applicable.

I trust this answers your inquiry.

Sincerely yours,

Allen I. Olson

Attorney General